No. 83-663

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1983

THE STATE OF NEW YORK and JAMES L. LAROCCA, as Commissioner of the Department of Transportation of the State of New York,

Petitioners,

against

THE UNITED STATES OF AMERICA,

Respondent,

and

BEECHCRAFT EAST, INC.,

Respondent.

JAMES L. LAROCCA, as Commissioner of the Department of Transportation of the State of New York,

Petitioner,

against

AIRCRAFT OWNERS AND PILOTS ASSOCIATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF

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TABLE OF CONTENTS

	PAGE
Table of Authorities	II
A. The Eleventh Amendment Cannot Be The Source Of A Federal Court's Finding Of Inadequacy Of Remedy Or Of Irreparable Injury In A Preliminary Injunction Proceeding	1
B. Federal Courts Must Inspect The Adequacy Of State Court Remedies When They Are Asked To Award A Preliminary Injunction	5
Conclusion	8

TABLE OF AUTHORITIES

PAGE

Cases:

Alabama Public Service Comm'n v. Southern Ry. Co., 341 U.S. 341 (1951) 6

DiGiovanni v. Camden Fire Insurance Ass'n, 296 U.S. 64 (1935) 2, 3

Edelman v. Jordan, 415 U.S. 651 (1974) 2

England v. Louisiana Medical Examiners, 375 U.S. 411 (1964) 7

Ex Parte Young, 209 U.S. 123 (1908) 2

Fair Assessment In Real Estate Ass'n v. McNary, 454 U.S. 100 (1981) 6, 7

Great Lakes Dredge & Dock v. Huffman, 319 U.S. 294 (1943) 7

Hawaii v. Gordon, 373 U.S. 57 (1963) 4

Hipp v. Babin, 60 U.S. (19 How.) 271 (1856) 5, 6

In re Ayers, 123 U.S. 443 (1887) 4

Matthews v. Rodgers, 284 U.S. 521 (1932) 5, 7

New York Guaranty Co. v. Memphis Water Co., 107 U.S. (17 Otto) 205 (1882) 6

Pennhurst State School and Hosp. v. Halderman, 52 U.S.L.W. 4155 (Sup. Ct. January 23, 1984) 2, 4

Pennsylvania v. Williams, 294 U.S. 176 (1935) 6

Petroleum Exploration, Inc. v. Commissioner, 304 U.S. 209 (1938) 6

Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941) 7

PAGE

Singer Sewing Machine Co. v. Benedict, 299 U.S. 481 (1913) 7
Sperry Int'l Trade, Inc. v. Israel, 670 F.2d 8 (2d Cir. 1982) 3, 4
Stainback v. Mo Hock Ke Lo Po, 336 U.S. 368 (1949) 3

Trainor v. Hernandez, 431 U.S. 434 (1977) 5

Younger v. Harris, 401 U.S. 37 (1971) 5

Constitution and Statute:

U.S. Const.:
Amendment XI ..... *passim*

Judiciary Act of 1789, 1 Stat. 82:
Section 16 5

Miscellaneous:

1 POMEROY'S EQUITY JURISPRUDENCE § 295 (5th ed. 1941) 2

A. The Eleventh Amendment Cannot Be The Source Of A Federal Court's Finding Of Inadequacy Of Remedy Or Of Irreparable Injury In A Preliminary Injunction Proceeding.

Respondent the United States of America, like the court below, asserts that the Eleventh Amendment caused respondent Beechcraft East, Inc. ("Beechcraft") to have inadequate "federal remedies at law" and concludes that Beechcraft was entitled "to invoke the equitable powers of the court" regardless of the nature or extent of Beechcraft's alleged irreparable injury. *Compare* Brief For The United States In Opposition ("brief") at 7 *with* App. A at 3a-5a.* The United States repeats (brief at 7 & n.3, 10) two errors of the lower court: (1) the failure to observe that the Eleventh Amendment continues to protect a state even though a state officer has been sued for injunctive relief; and (2) the improper use of the Eleventh Amendment as the source of Beechcraft's alleged inadequate remedy and irreparable injury. The United States also makes two new errors. It mischaracterizes the record by suggesting that Beechcraft suffered an exceptional monetary loss amounting to irreparable harm. Brief at 7 & n.3. It further proposes a "balance of hardships" test which the lower courts did not apply and could not have reached given Beechcraft's inadequate showing of irreparable injury. *Id.* at 9. Last, the United States makes the irrelevant observation that if it had moved for a preliminary injunction, the Eleventh Amendment issues presented by the petition would not exist. *Id.* at 10 & n.5.

* References preceded by "App." identify the lettered appendix and page(s) of the appendices to the petition for a writ of certiorari.

Contrary to the conclusion of the United States and the lower court, the Eleventh Amendment protection afforded to the State of New York (the "State") and the Commissioner of its Department of Transportation continues even after federal jurisdiction is established under *Ex Parte Young*, 209 U.S. 123 (1908). *See* petition at 15. The Court's recent decision in *Pennhurst State School and Hosp.* v. *Halderman*, 52 U.S.L.W. 4155 (Sup. Ct. January 23, 1984), highlights this established principle. "A federal court must examine each claim in a case to see if the court's jurisdiction over that claim is barred by the Eleventh Amendment." *Id.* at 4164. Money claims against a state officer are among those that a federal court cannot hear despite the court's jurisdiction over the officer. *Edelman* v. *Jordan*, 415 U.S. 651 (1974). When the United States and the lower court rely on the Eleventh Amendment as the authority for Beechcraft's preliminary injunction, they turn the Amendment's continuing protection into an affirmative source of rights in equity. The transformation opposes the entire body of Eleventh Amendment precedent and impermissibly coerces the State's waiver of its immunity to avoid the injunction against its officer. *Pennhurst, supra* at 4157-4158; *see* petition at 13-16.

The United States' purported distinction of *DiGiovanni* v. *Camden Fire Insurance Ass'n*, 296 U.S. 64 (1935), also fails because it does not acknowledge that the same considerations which there compelled the Court to deny equitable jurisdiction, here should have counselled the court to deny equitable relief as a matter of discretion. *See* brief at 7 & n.3. After the merger of law and equity, "the familiar rules of equity remain . . ." and federal courts "refuse equitable relief in cases in which they formerly denied jurisdiction . . . ." 1 POMEROY'S EQUITY JURISPRUDENCE

§ 295, at 768 (5th ed. 1941). *Stainback* v. *Mo Hock Ke Lo Po*, 336 U.S. 368, 382 & n.26 (1949). As the *DiGiovanni* movant's reliance on a statutory bar to support its request in equity contradicted "the express prohibition of Congress", *DiGiovanni*, 296 U.S. at 70, Beechcraft's reliance on the Eleventh Amendment for the same purpose contradicts an express prohibition of the Constitution. Petition at 13-14. Indeed, the constitutional dimension of the Eleventh Amendment required even greater deference than the statutory bar respected in *DiGiovanni*.

The United States additionally misreads the record (brief at 8 & n.3) when it suggests that Beechcraft's pecuniary loss was sufficiently substantial to avoid Second Circuit precedent, holding that money damage does not constitute irreparable injury. *E.g.*, *Sperry Int'l Trade, Inc.* v. *Israel*, 670 F.2d 8, 11 (2d Cir. 1982). The record permits only two possible findings about Beechcraft's claimed loss. The loss was insubstantial because "only a small percentage of Beechcraft's nation-wide and international revenue . . ." was at risk (App. C at 22a), or the Eleventh Amendment bar made the extent of Beechcraft's alleged injury irrelevant. App. A at 3a; App. C at 22a. *See also* Transcript of Proceeding on November 19, 1982 at 18, receiving petitioners' offer of proof that Beechcraft's financial health would not be threatened without an injunction and finding an evidentiary hearing unnecessary because of the Eleventh Amendment bar.

Further, the United States' proposal that the federal courts' application of a "balance of hardships" test will minimize the Eleventh Amendment damage to the State is misplaced. *See* brief at 9. The proposal would require the federal courts to engage in balancing before they have found

irreparable injury, the crucial first factor for a preliminary injunction.* It is without application in the case at bar since the lower courts did not "balance the hardships" and suggests, contrary to the record, that Beechcraft's minimal loss was sufficient to outweigh the State's interest in the enforcement of its statute. *See* discussion above at 3.

Last, the United States' observation that the State's Eleventh Amendment issue would be absent if it had sought the injunction, although accurate, is not responsive.** Brief at 10 & n.5. Here, the injunction was awarded to a private litigant against the State and its officer, and the Eleventh Amendment is directly involved.†

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* The prevailing preliminary injunction test is one followed by the Second Circuit: "(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief." *Sperry Int'l*, 670 F.2d at 11.

** The United States' observation that the State did not appeal the district court's finding of likelihood of success on the merits is also not responsive. Brief at 5. "Irreparable injury was so palpably nonexistent . . ." that the injunction's vacatur was sought on this ground alone. Court of Appeals Reply Brief for Defendants-Appellants at 3. Nevertheless, petitioners emphasized in both courts below that the merits were disputed and were simply "reserved . . . for a later day", *id.*, when the record would be complete.

† When the United States addresses the propriety of Beechcraft's suit against the State *eo nomine*, it first concedes the issue in petitioners' favor and then attempts to withdraw the concession. *Compare* brief at 9 *with id.* at 10. Petitioners agree that the "district court erred in entering the preliminary injunction against the State." *Id.* at 9. However, we depart from the United States when it concludes that this error does not also infect the injunction against the State's officer. *Id.* at 10. As discussed above, the injunction violates the Eleventh Amendment because the decree, although nominally against the State's officer, operates against the State. *See Hawaii* v. *Gordon*, 373 U.S. 57, 58 (1963). In the lower court, the State cited *In re Ayers*, 123 U.S. 443 (1887), for this well-settled proposition. The lower court regarded *Young*, 290 U.S. at 123, as having "'undermined the basis of *In re Ayers*.'" App. A at 5a. In *Pennhurst*, *supra* at 10, this Court confirmed the vitality of the *Ayers* doctrine. *See also*, *Pennhurst*, *supra* at 4170 & n.28 (*Stevens*, J., dissenting).

B. Federal Courts Must Inspect The Adequacy Of State Court Remedies When They Are Asked To Award A Preliminary Injunction.

The United States repeats another lower court mistake when it concludes that federal courts, as a general rule, only inspect the adequacy of legal remedies available in the federal, and not state, forums. *Compare* brief at 5-7 *with* App. A at 4a. Like the court of appeals, the United States disregards historic precedent decided under Section 16 of the Judiciary Act of 1789, 1 Stat. 82, and makes two exceptions to its general rule—pending state enforcement actions, the doctrine of *Younger* v. *Harris*, 401 U.S. 37 (1971), and its progeny, *e.g.*, *Trainor* v. *Hernandez*, 431 U.S. 434 (1977), and injunctions against the collection of state taxes.* Brief at 6. The exceptions actually are reflections of the correct general rule.

Hipp v. *Babin*, 60 U.S. (19 How.) 271 (1856), one of the Court's earliest decisions, illustrates the correct rule advanced by petitioners. *See* petition at 10. There the Court, relying on the maxim that federal courts should not grant equitable relief when a "plain, adequate and complete" remedy existed at law, dismissed an equitable bill seeking title to land and an accounting because a sufficient legal remedy existed in the Louisiana courts.** *Id.* at 279. *See*

* The United States and the lower court agree on one exception to their articulation of the general rule, tax injunction cases. The lower court cites state rate cases as its second exception. App. A at 4a. The United States' second exception, the *Younger* doctrine, differs.

** The maxim was codified in Section 16, *supra*, and is regarded as but declaratory of the English Chancellor's "rule in equity . . . forbid[ding] . . . recourse to the extraordinary remedy of equity where the right asserted may be fully protected at law." *Matthews* v. *Rodgers*, 284 U.S. 521, 525 (1932).

also New York Guaranty Co. v. *Memphis Water Co.*, 107 U.S. (17 Otto) 205, 213 (1882) (equitable claim on contract dismissed because remedy at law available in Tennessee courts). *See Pennsylvania* v. *Williams*, 294 U.S. 176 (1935). Almost one hundred years later, the equitable maxim applied in *Hipp, supra,* was observed in *Alabama Public Service Comm'n* v. *Southern Ry. Co.*, 341 U.S. 341, 349 (1951), where an injunction against a state order prohibiting discontinuance of railroad service was denied because of the existence of adequate state court review procedures.* The vitality of the maxim continues in modern times. Just two terms ago, the Court characterized its prior precedent on this subject as articulating "the traditional doctrine that courts of equity will stay their hand when [state] remedies at law are plain, adequate and complete." *Fair Assessment In Real Estate Ass'n* v. *McNary*, 454 U.S. 100, 108 (1981). *See* petition at 10.

The United States' creation of two exceptions to its general rule (brief at 6) merely reaffirms petitioners' earlier stated view that the exceptions are applications of the correct general rule. The first created exception, the deference to state court remedies embodied in the *Younger* doctrine, was shown by the Court in *Hipp, supra, New York Guaranty, supra,* and *Alabama Public Service Comm'n, supra,* although no state enforcement proceedings were involved in those cases. The second created exception, tax

* Justices Frankfurter and Jackson concurred in the result, finding that no substantial federal question was presented. *Alabama Public Service Comm'n*, 341 U.S. at 355. With reasoning parallel to the United States and the lower court, the concurring Justices disagreed with the majority's view that federal courts should review the adequacy of state court remedies. *Id.* at 359. However, they expressly recognized the equity court's discretion to deny relief even where no adequate remedy at law existed in the federal court. *Id.* at 360. *See Petroleum Exploration, Inc.* v. *Commissioner*, 304 U.S. 209, 221 (1938).

injunction actions, fares no better since it has been acknowledged as a " 'notable application' ", *Fair Assessment*, 454 U.S. at 108, of the correct rule rather than as an exception. *See* petition at 11-12.

Last, the United States misperceives petitioners' "notions of federalism." Brief at 8. Petitioners and the thirty-three state *amici* do not urge, as the United States suggests, that this action be dismissed and that Beechcraft be required to litigate the merits of its federal claims in state court. Instead, we urge that Beechcraft, once it selected the federal forum, was bound by the limitations that federalism imposes on the award of preliminary injunctions. Where the State's officer is a federal court defendant, "[t]he scrupulous regard for the rightful independence of state governments . . ." requires the denial of a preliminary injunction "in every case where the asserted right may be preserved without it." *Matthews*, 284 U.S. at 525. *Accord Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 294, 297 (1943); *Singer Sewing Machine Co.* v. *Benedict*, 229 U.S. 481, 485 (1913). The State Court of Claims provides Beechcraft with a ready forum in which to assert its claim to compensatory relief.* Its choice of the federal forum could not create a

* The Court need not consider the district court's erroneous holding that the State Court of Claims is without jurisdiction unless it rejects petitioners' independent claim under the Eleventh Amendment. *See* petition at 13-16; discussion at 2-4. If the Court does reach the issue, petitioners already have demonstrated that the relevant New York statute and case law provides Beechcraft with an adequate remedy in the State Court of Claims. Petition at 7 & n.*. The United States limits its opposition on this point. It states that "there is . . . a substantial question whether state law would provide damages for injuries suffered as a result of an unconstitutional statute. Brief at 5 & n.1. In so stating, the United States at best has created a question of uncertain state law to be resolved by the state courts. *England* v. *Louisiana Medical Examiners*, 375 U.S. 411, 416 & n.7 (1964); *Railroad Comm'n* v. *Pullman Co.*, 312 U.S. 496, 499-500 (1941).

hybrid remedy which disregards state at law relief and converts the Eleventh Amendment into a source of affirmative rights.

Conclusion

For the foregoing reasons and those set forth in the petition, review should be granted and the judgment of the court of appeals summarily reversed.

Dated: New York, New York
February 3, 1984

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